

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 127 OF 2006

SMT. SHANTABAI MANDREKAR, MERCES Petitioner
GOA.

Versus

SMT. ALBERTIN D'SOUZA AND 8 ORS., ...Respondents

Mr. J.P. Mulgaonkar, Advocate for the Petitioner.
Mr. Vaman K. Bodke For R-1 & 2

Coram:- DR. S. RADHAKRISHNAN, J.

Date:- 18th October, 2006

P.C.:

1. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. By this petition, the petitioner is challenging the Orders passed in three applications namely application dated 4th May, 2004 for condonation of delay and an application dated 17th July, 2004 for setting aside an ex-parte order and a third application dated 17th March, 2005 for enlargement of time under Section 148 of the Code of Civil Procedure. The learned counsel for the Petitioner, Mr. Mulgaonkar is not pressing the application dated 17.3.05 which was decided by the learned Civil Judge J.D., Panaji. As far as the aforesaid two applications dated 4th May, 2004 and which is numbered as CMA No.11/04/C wherein the learned Judge has disposed of the same with an order allowing the application whereby the delay in filing the written statement was condoned. However the other application dated 17th July, 2004 which is numbered CMA No.268/04/C which was also for setting aside of the ex-parte order and the written statement filed to be taken on record wherein the learned Civil Judge J.D. by his Order dated 11th August, 2005 dismissed the said application on

the ground that the written statement was filed after 90 days and no just and sufficient cause was established.

3. After perusal of the original records and finding that there are two self contradictory orders passed on 11th August, 2005 with regard to CMA No.11/04 as well as CMA No.268/04. Hence in the larger interest of justice, both the parties are agreeable for setting aside both the Orders dated 11th August, 2005 passed in the aforesaid applications and both the parties are agreeable for rehearing before the learned Civil Judge J.D. at Panaji on the issue whether the delay in filing written statement should be condoned in this case or not as per the provisions of Order VIII rule 1 of C.P.C. as per the law laid down by this Court as well as by the Supreme Court.

4. Hence both the orders dated 11th August, 2005, in the above two CMA Nos.11/04 and 268/04 are set aside and the learned Civil Judge to afresh decide whether the Written Statement should be taken on record or not as per the law laid down by the Supreme Court and this Court.

5. Writ Petition stands disposed of accordingly. The original records which were called for, be returned to the Civil Judge Junior Division "D" Court, forthwith.

DR. S. RADHAKRISHNAN, J.

sl.